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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE

425 Eye Street N.W.

BCIS; AAO, 20 Mass, 3/F

Washington, D.C. 20536

File: WAC-99-042-52268 Office: California Service Center

Date: JUN 3 2003

IN RE: Petitioner:  
Beneficiary:

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

*Robert P. Wiemann*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The immigrant visa petition was denied by the Director, California Service Center. An appeal was summarily dismissed by the Associate Commissioner for Examinations, now the Director, Administrative Appeals Office (AAO). The matter is now before the AAO on motion to reopen. The motion to reopen will be granted; the decision of the center director will be affirmed.

The petitioner is described as a religious organization. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. § 1153(b)(4), in order to employ her as a religious education director/instructor.

The director denied the petition determining that the petitioner failed to establish that the beneficiary had been continuously employed in a religious vocation for the two years preceding the filing of the petition.

The appeal from the decision was summarily dismissed on January 29, 2002, based on the failure of the petitioner to submit a brief or evidence in support of the appeal. On motion, counsel argues that a brief was timely submitted to the Service. Counsel submitted a copy of a Federal Express delivery notice reflecting that an item was received by the AAO from counsel on October 10, 2000. Based on this evidence, the prior decision summarily dismissing the appeal is withdrawn, and the motion to reopen is granted.

Section 203(b)(4) of the Act provides classification as a special immigrant religious worker to a qualified alien described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from

taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The petitioner is described as a non-profit religious organization that trains missionaries. The beneficiary is described as a native and citizen of Korea who was last admitted to the United States on April 17, 1998, as a B-2 visitor. The record therefore reflects that the beneficiary remained beyond any period of authorized stay and has resided in the United States since such time in an unlawful status. The petitioner claimed that the beneficiary has never worked in the United States without permission.

In order to establish eligibility for classification as a special immigrant minister, the petitioner must satisfy each of several eligibility requirements.

The issue to be addressed in this proceeding is whether the alien beneficiary was continuously carrying on the vocation of a minister for at least the two years preceding the filing of the petition.

8 C.F.R. § 204.5(m)(1) states, in pertinent part, that:

All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.

The petition was filed on November 27, 1998. Therefore, the petitioner must establish that the beneficiary had been continuously and solely carrying on the vocation of a minister of religion since at least November 27, 1996.

In this case, an official of the petitioning church testified that the beneficiary worked at the Mi Pyung Chung Ang Church in Korea from January 1982 to March 1998. In an appellate brief, the petitioner's counsel stated that the beneficiary had worked as a religious educator/instructor from January 1982 to October 4, 2000.

The record is insufficient to establish the beneficiary's claimed employment. The "Certificate of Career" from the beneficiary's foreign employer notwithstanding, there is no contemporaneous documentation that the beneficiary has been continuously carrying on a religious vocation such as the beneficiary's foreign tax records, banking documents, pay statements or other proof. Merely going on record without supporting documentary evidence, is not

sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). It must therefore be concluded that the petitioner has not established that the beneficiary had been continuously employed in a religious vocation for the two years immediately preceding the filing of the petition. For this reason, the petition may not be approved.

Beyond the decision of the director, the petitioner has submitted no evidence that the beneficiary had been engaged "solely" as a religious educator/instructor during the two-year period or that the position of religious educator is a qualifying religious vocation. As the appeal will be dismissed on the grounds discussed, these issues need not be examined further.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

**ORDER:** The decision of the center director dated August 22, 2000, is affirmed.